United Nations ST/SGB/2016/7

Secretariat

22 June 2016

Secretary-General's bulletin

Terms of reference for the Office of the United Nations Ombudsman and Mediation Services

The Secretary-General, pursuant to General Assembly resolutions 55/258, 56/253, 61/261, 62/228, 63/253, 65/251 and 66/237, in consultation with the executive heads of the separately administered funds, programmes and entities of the United Nations system, hereby promulgates the following:

Section 1
Establishment of the Office of the United Nations Ombudsman and Mediation Services

Purpose of the Office

1.1. The Office of the United Nations Ombudsman and Mediation Services is established as the informal component of the system of administration of justice to make available confidential services of impartial and independent persons to address work-related issues of staff members.

Scope

1.2. The Office shall serve staff members of the United Nations system, including but not limited to the Secretariat, the International Tribunal for the Former Yugoslavia, the International Residual Mechanism for Criminal Tribunals and the separately administered funds, programmes and entities of the United Nations system, such as the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office for Project Services (UNOPS) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

1.3. All staff members will be informed by their respective organizations of the manner in which they can bring matters of concern to the attention of the Office.

1.4. The use of the services of the Office is voluntary. All possible use should be made of the informal system for the benefit of staff and management. Therefore, efforts for the informal resolution of conflict should be supported, encouraged and accommodated by the organization. No staff member who brings a matter to the attention of the Office, provides information to the Office, uses its services or

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pursues an informal resolution of conflict shall be subject to any reprisal, whether threatened to be taken or actually taken, because he or she sought the assistance of an ombudsman. Any staff member who engages in such reprisal may be subject to disciplinary measures, in accordance with chapter X of the Staff Rules, if such misconduct is established.

Structure of the Office

1.5. The Office of the United Nations Ombudsman and Mediation Services is a single, integrated and decentralized office. It comprises three pillars:

(a) The Office of the United Nations Ombudsman;

(b) The Office of the Ombudsman for UNDP, UNFPA, UNICEF, UNOPS and UN-Women;

(c) The Office of the Ombudsman for UNHCR.

The Office also has a mediation service, which reports to the United Nations Ombudsman.

1.6. The United Nations Ombudsman shall be responsible for the oversight of the entire Office and enhance the coordination among its three pillars. The enhancement of coordination shall include the harmonization of standards, operating guidelines, reporting categories and databases.

1.7. The United Nations Ombudsman shall have direct access to the Secretary-General. The Ombudsmen for the Funds, Programmes and Entities shall have direct access to the executive heads of the funds, programmes and entities.

1.8. The Office shall include regional branch offices to ensure that staff members at all duty stations have easy access to its services. Each regional office will be headed by a regional ombudsman. The regional ombudsmen report to the United Nations Ombudsman and are independent of the United Nations entities in their respective regions.

1.9. For cases arising in the funds, programmes and entities, regional ombudsmen shall consult and liaise with the ombudsman serving the organization in question. Similarly, for cases that they may receive that arise in the Secretariat, the Ombudsmen for the Funds, Programmes and Entities shall consult and liaise with the United Nations Ombudsman or the relevant regional ombudsman.

Section 2
Appointments

2.1. The Secretary-General shall appoint, in consultation with the executive heads of the funds, programmes and entities, the United Nations Ombudsman, at the level of Assistant Secretary-General, from a list of candidates compiled and recommended by a selection committee composed of representatives of staff and management as well as outside ombudsmen.

2.2. The executive heads of the funds, programmes and entities shall appoint ombudsmen for their respective organizations following similar procedures, in consultation with the Secretary-General.

2.3. The United Nations Ombudsman shall serve for a five-year term, with the possibility of renewal for one additional term. Such renewal will be considered in consultation with staff representatives and the executive heads of the separately administered funds, programmes and entities. Upon completion of his or her term of office, the United Nations Ombudsman shall not be eligible for other employment within the Secretariat.

2.4. The terms of office for the Ombudsmen for the Funds, Programmes and Entities shall be determined by the executive heads of their respective organizations. Upon completion of their terms of office, the Ombudsmen shall not be eligible for other employment in the funds, programmes and entities in which they served as ombudsmen.

Section 3
Operating principles

General principles

3.1. The ombudsmen shall have the authority to consider workplace conflict relating to employment within their respective organizations. The term "conflict" is to be construed in its broadest sense and includes matters pertaining to conditions of employment, the administration of benefits and managerial practices, as well as professional and staff relations matters.

3.2. In their work, the ombudsmen of the United Nations shall be guided by the Charter of the United Nations, resolutions of the General Assembly, the Staff Regulations and Rules, applicable policies, any other administrative issuances relevant to service in the Secretariat and the funds, programmes and entities, as applicable, as well as generally accepted international standards of practice for organizational ombudsmen and principles of justice and fairness.

3.3. Safeguarding confidentiality and impartiality is critical for the Office to carry out its mandate. Requests for access to information relating to the substantive work of the Office will need to take account of the guiding principles of confidentiality, independence, informality and impartiality, as articulated in the present terms of reference.

3.4. In accordance with section 1.2, an ombudsman may hear from any of the parties involved in an issue who wish to avail themselves of the ombudsman's services. All interactions with an ombudsman shall be voluntary. As necessary, an ombudsman may refer staff to other appropriate offices.

Independence

3.5. The Office is independent of other organizational entities. The Office shall not report to or be affiliated or aligned with any other United Nations function or department.

3.6. In the performance of his or her duties, an ombudsman shall be independent of any United Nations organ or official. An ombudsman shall hold no other position concurrently within the Secretariat, funds, programmes or entities.

3.7. The Office shall have access to all records concerning staff. The exceptions to that access are:

(a) Medical records, unless the staff member concerned expressly consents to their release;

(b) Records of investigations, unless otherwise permitted by the relevant parties or authority;

(c) Records and communications covered by professional legal privilege, unless otherwise permitted by the relevant parties or authority;

(d) Financial disclosure statements made in accordance with staff regulation 1.2 (n).

The Office shall also have access to individuals in the organization that may be able to provide advice, information or expert opinions on a particular matter. Requests for information by the Office shall be answered promptly and efficiently.

3.8. An ombudsman shall exercise sole discretion over whether or how to act regarding staff concerns. An ombudsman may also initiate action on a concern identified through his or her direct observation.

3.9. The ombudsmen shall maintain operational independence from the organizations that they serve. They shall have responsibility for the management of matters raised by staff in their respective organizations.

Neutrality and impartiality

3.10. An ombudsman, as a designated neutral party, shall remain impartial and have no personal interest or stake in the outcome of an issue. An ombudsman shall consider the legitimate concerns and interests of all individuals affected by the matter under consideration.

3.11. An ombudsman shall advocate fairness and equitably administered processes and shall not advocate on behalf of any party.

Confidentiality

3.12. All Office staff shall maintain strict confidentiality concerning matters that are brought to their attention and take every reasonable step to safeguard confidentiality and privileged information, including the following:

(a) The Office shall not reveal the identity of any individual with whom there is contact in the course of case-related work, nor shall it reveal information provided in confidence that could lead to the identification of the individual, without the individual's express permission;

(b) Office staff shall take specific action relating to the matter only with the express permission of the individual staff member and only to the extent permitted, unless such action can be taken in a way that safeguards the identity of the individual, and even then at the sole discretion of the Office.

Others cannot waive the confidentiality of the Office. The only exception to strict confidentiality is when, as determined by the Office, there appears to be an imminent risk of serious harm and when there is no other reasonable option for confidentially handling the matter.

3.13. The ombudsman shall not be compelled by any United Nations official to provide information about concerns brought to his or her attention.

3.14. Information or documentation connected to the work-related issues of staff members obtained or generated by the Office through the exercise of its mandate, including requests for assistance by staff members and subsequent communications, are strictly confidential and will not be sought, obtained or used for any other purpose.

Informality

3.15. An ombudsman shall address work-related issues through informal means, including mediation, listening, providing and receiving information, identifying and reframing issues, exploring a range of options and undertaking informal fact-finding. The ombudsman does not replace any other organizational entity, but collaborates, with the permission of the staff member, with other offices and services to resolve work-related concerns and conflicts while respecting confidentiality.

3.16. An ombudsman cannot make or set aside managerial decisions, mandate policies or be a party to any formal administrative procedure. However, an ombudsman may be consulted on policy issues where his or her views and experience may prove useful. An ombudsman shall not have decision-making powers, but shall advise and make suggestions or recommendations, as appropriate, on actions needed to settle conflicts, taking into account the rights, equities and obligations existing between the organization and the staff member.

3.17. An ombudsman shall not determine rights, and procedures conducted by an ombudsman do not constitute formal adjudicative or investigatory procedures, nor shall ombudsmen keep records for their respective organizations or accept notice on behalf of their organizations.

3.18. In line with staff rule 11.1 (b), both the staff member and the Administration may initiate informal resolution of the issues involved at any time before or after the staff member chooses to pursue the matter formally. The conduct of informal resolution by the Office may result in the extension of the deadlines applicable to management evaluation and to the filing of an application with the United Nations Dispute Tribunal, in accordance with staff rules 11.2 (c), 11.2 (d) and 11.4 (c), in order to allow the parties to explore all avenues for finding informal solutions.

Section 4
Reporting

4.1. The Office shall identify, analyse and report on broad systemic issues and make recommendations to improve the policies, procedures, systems and structures of the respective organization, without breaching confidentiality or anonymity.

4.2. The United Nations Ombudsman shall provide regular reports on the activities of the Office to the General Assembly, through the Secretary-General. The Ombudsmen for the Funds, Programmes and Entities shall provide regular reports to the executive heads of their respective organizations.

Section 5
Mediation

5.1. The Office, including the Ombudsmen for the Funds, Programmes and Entities, shall provide mediation services and assist parties in working towards the

resolution of a dispute or difference, with the parties themselves remaining in control of the final decision.

5.2. A party shall be able to request mediation at any time before or after the staff member chooses to pursue the matter formally. Pending efforts at mediation, the deadlines for submitting a request for management evaluation or for filing an application with the United Nations Dispute Tribunal may be extended in accordance with staff rules 11.2 (c), 11.2 (d) and 11.4 (c).

5.3. Mediation can also be requested by any of the parties after a party has filed an application with the United Nations Dispute Tribunal. If the other party agrees to proceed with mediation, the Dispute Tribunal may suspend the proceedings for a period of time, in accordance with its statute and rules of procedure.

5.4. Mediation may be requested by any party to a dispute. A proposal to refer a dispute to mediation may also be made by the Management Evaluation Unit in the Secretariat, the executive heads of the funds, programmes and entities, the United Nations Dispute Tribunal, the United Nations Appeals Tribunal, the Office of Staff Legal Assistance and other similar offices. The referral of a dispute to mediation will, however, take place only with the consent of all parties concerned.

5.5. The Office shall maintain the confidentiality of all mediation discussions. A mediator shall not determine rights, and procedures conducted by the mediator do not constitute formal adjudicative or investigatory procedures, nor shall mediators keep records for their respective organizations or accept notice on behalf of their organizations.

5.6. Every person involved in the mediation shall keep confidential all information arising out of or in connection with the mediation, including the terms of any settlement, but not including where disclosure is required to implement or to enforce the terms of the settlement.

5.7. A mediator is governed by the present terms of reference and is expected to adhere to generally accepted mediation principles, which dictate that mediation should be voluntary, that the concerned parties should have all information necessary and should reach agreement themselves.

Section 6
Final provisions

6.1. The present bulletin shall enter into force on the date of its issuance.

6.2. The present bulletin supersedes Secretary-General's bulletin ST/SGB/2002/12, entitled "Office of the Ombudsman — appointment and terms of reference of the Ombudsman".

(*Signed*) **BAN Ki-moon**
Secretary-General